

LICENSING SUB COMMITTEE

BUSINESS AND PLANNING ACT 2020 APPLICATION FOR PAVEMENT LICENCE

**ERIC BARTHOLOMEW, 10-18 EUSTON ROAD,
MORECAMBE, LA4 5DD**

DETERMINATION OF APPLICATION FOLLOWING REQUEST TO REMOVE A STANDARD CONDITION

30th SEPTEMBER 2021

Report of Licensing Enforcement Officer

PURPOSE OF REPORT

To enable members to determine an application for a Pavement Licence under Part 1 of the Business and Planning Act 2020. The application was submitted by J D Wetherspoon PLC in respect of Eric Bartholomew, 10 – 18 Euston Road, Morecambe. A request has been made by the applicant to remove a standard condition applicable to all the Pavement licences.

The report is public

RECOMMENDATIONS

The Sub Committee is requested to determine the application in the light of the request made, information presented at the hearing and having regard to the requirements of the Council's Pavement Licence Policy and the Council's Constitution.

In making the decision the committee have three options: whether to grant the application as requested, modify any conditions of the licence, or to reject the whole application. Members are reminded that they should state the reasons for their decision.

1.0 Introduction

On 22nd July 2020 The Business and Planning Act 2020 came into force. On 20th July 2021 amendments to the aforementioned Act came into force. The purpose of the amendment is to extend the current provision for Pavement Licences from the

existing statutory expiry date of 30th September 2021 for a further 12 months until 30th September 2022.

- 1.1 Part 1 of the Act deals with the consumption and sale of food and drink outdoors, and relates to two particular licensing issues:
 - The introduction of Pavement licences
 - The modification of premises licences to authorise off sales of alcohol for a limited period
- 1.2 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. The Business and Planning Act Pavement licence provisions provide for similar but detail a much quicker administrative process. The extended Pavement licence provisions facilitate the granting of licences up to and including 30 September 2022.
- 1.3 The Business and Planning Act 2020 (the “Act”) now introduces a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.4 The Act also introduces provisions for the automatic modification of premises licences (issued under Licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. Amendments to regulations now make provision for the continuation of the off sale of alcohol from 30 September 2021 up to and including 30 September 2022. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.5 The above two provisions have been introduced as a temporary measure (up to and including 30 September 2022) in order to facilitate the operation of business within the restrictions / guidance currently in place regarding the covid19 pandemic. The pavement licence provision provides a fast track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default.

2.0 Pavement Licences

- 2.1 The implementation of relevant procedures and processes to deal with pavement licences was regarded as a matter of urgent business, due to COVID- 19 restrictions imposed on businesses. The matter was considered by the Chief Executives representative in consultation with the Chair of Licensing Committee and was approved on 31 July 2020. A further report was approved in August 2021 to extend pavement licences until 30 September 2022.

- 2.2 The Business and Planning Act details the following
- Applications must be made in writing to the Local Authority
 - Applications must be accompanied by a fee of not more than £100 as the local authority may require
 - Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications
 - The local authority has to publish the application and publicise the 7 day consultation period
 - The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period
 - The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
 - The local authority must take into account any representations made during the consultation period
 - The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default
 - The local authority can grant, or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area
 - The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2022.
 - The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
 - Pavement licences do not repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid
 - There are a number of provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
 - The Act details that a pavement licence constitutes deemed planning permission.

2.3 A copy of the Councils Pavement Licence Policy approved on the 27 August 2021 is attached at **Appendix A**. The policy outlines provisions in place in respect of pavement licences and also details, standard licence conditions (Appendix 2 within the policy), National Licence Conditions (Appendix 3 within the policy) and constitutional decision making (Appendix 4 within the policy)

2.4 Attached at **Appendix B** is a copy of the Governments Statutory guidance issued in respect of Pavement Licences.

3.0 The Application

3.1 Attached at **Appendix C** is the application received from J D Wetherspoon PLC on 17th September 2021 in respect of, Eric Bartholomew, 10 - 18 Euston Road, Morecambe.

3.2 There are a set of standard conditions issued with each pavement licence. The applicant has requested to remove the standard condition that states:

“Where alcohol is permitted to be served or consumed in the licensed area glass receptacles including bottles cannot be used. Polycarbonate or similar material receptacles should be used”.

- 3.3 The application states that polycarbonates will be implemented on days of local football fixtures.
- 3.4 The required public notice has been provided by the applicant verifying that it had been prominently displayed at the premises and this was received by the Council on 17th September 2021.
- 3.5 The consultation period has been undertaken in accordance with the policy. The following relevant authorities have been consulted on the application;
- Lancashire Police
 - Local Authority Planning,
 - Environmental Health
 - Lancashire County Council Highways,
 - Morecambe BID
 - The City Councils Public Realm
 - Lancashire Fire and Rescue

There have been no adverse comments received from any of the relevant authorities.

- 3.6 The Council’s constitution states that “To determine applications for pavement licenses under the Business and Planning Act 2020 where adverse representations have been made and not withdrawn or other reasons why the Licensing Manager considers it relevant to refer the matter to the Licensing Sub-Committee.
- 3.7 The Licensing Manager considered the request to remove a standard condition a relevant matter to refer to the Licensing Sub-Committee.
- 3.8 For members information, within a previous application it is noted that JD Weatherspoon PLC did apply for a waiver of the standard condition in May 2021. Due to oversight the premises have been utilising glassware outdoors since May 2021.

4.0 The hearing

- 4.1 The applicant has been invited to the hearing and has been provided with a copy of the report and notified that they may be represented at the hearing.
- 4.2 In making the decision the Sub Committee has three options
- a) Grant the licence as applied with the removal of the standard condition and impose the National Licence Conditions and Lancaster City Councils Standard Licence Conditions as requested.
 - b) Grant the licence with modification as determined by the Committee and include the imposition of the National Licence Conditions and Lancaster City Council Standard Licence conditions with or without modification.
 - c) Refuse the application
- 4.3 In making the decision the committee should have regard to the following
- 1. Information provided in the application and by the applicant at the hearing
 - 2. The Councils Policy in respect of Pavement licences attached at Appendix A
 - 3. The Statutory guidance in respect of Pavement licences attached at Appendix B

4.5 Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications. In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

4.6 The Business and Planning Act does not provide for a right of appeal against a decision of the Council in respect of determining Pavement licence applications, however where a party considers that there has been maladministration, the complaints procedure and the Local Government Ombudsman can investigate. In addition, a judicial review process is available via the High Court.

5.0 Conclusion

5.1 Members are asked to determine the Pavement licence application. Set out in the application is a request to remove a standard condition relating to the use of glassware in the outdoor area. No responsible authorities have submitted a representation relating to the intended use. The removal of the condition may impact on Public Safety, although the applicant has expressed the intention to utilise polycarbonate glassware on football match days. Members may wish to add conditions to the licence to ensure this is actioned. Members should have regard to the pavement licence policy, information within the report and submissions made by the applicant. Members are reminded that they should state the reasons for their decision.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None.

FINANCIAL IMPLICATIONS

Financial Services have not been consulted as there are no financial implications.

LEGAL IMPLICATIONS

The Business and Planning Act 2020 provides the statutory framework for Pavement Licences. The Council's constitution has been updated to detail the decision making process in respect of Pavement Licences and this report has been prepared in accordance with the legal framework

BACKGROUND PAPERS

None

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